

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: Squad #6	CCRB Case #: 201907390	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 08/19/2019 7:01 PM	Location of Incident: Hollis Avenue and 200th Street	Precinct: 113	18 Mo. SOL 2/19/2021	EO SOL 10/6/2021	
Date/Time CV Reported Tue, 08/20/2019 12:49 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/20/2019 12:49 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Edwin Espinal	03384	934831	103 PCT
2. POM Brandon Grasser	14283	955961	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM James Holder	18361	951823	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Edwin Espinal	Abuse: Sgt. Edwin Espinal interfered with § 87(2)(b) use of a recording device.	
B.POM Brandon Grasser	Abuse: Police Officer Brandon Grasser frisked § 87(2)(b)	
C.POM Brandon Grasser	Abuse: Police Officer Brandon Grasser searched § 87(2)(b)	
D.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal frisked § 87(2)(b)	
E.POM Brandon Grasser	Abuse: Police Officer Brandon Grasser frisked § 87(2)(b)	
F.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On August 20, 2019, § 87(2)(b) submitted this complaint with the CCRB via telephone.

On August 19, 2019, at approximately 7:01 p.m., § 87(2)(b) and § 87(2)(b) drove in the vicinity of Hollis Avenue and 200th Street in Queens. Sgt. Edwin Espinal, PO Brandon Grasser, and PO James Holder of the 103rd Precinct pulled them over for having a broken taillight. § 87(2)(b) recorded the officers with his cell phone. Sgt. Espinal told him to put his cell phone down (**Allegation A: Abuse of Authority: § 87(2)(g)**). PO Grasser asked § 87(2)(b) to exit the vehicle, frisked him, and allegedly searched him (**Allegations B and C: Abuses of Authority: § 87(2)(g)**). Sgt. Espinal asked § 87(2)(b) to exit the vehicle. § 87(2)(b) refused, and Sgt. Espinal called for backup. DTS Daniel Gukelberger, PO Brian Heisinger, and PO Kevin Nicoll of the 103rd Precinct responded.

Sgt. Espinal frisked § 87(2)(b) (**Allegation D: Abuse of Authority: § 87(2)(g)**) and PO Grasser frisked § 87(2)(b) (**Allegation E: Abuse of Authority: § 87(2)(g)**). Sgt. Espinal searched throughout the vehicle (**Allegation F: Abuse of Authority: § 87(2)(g)**), and then told § 87(2)(b) and § 87(2)(b) that they could leave without further incident.

§ 87(4-b), § 87(2)(g)

There were no summonses issued or arrests made in this incident. The investigation obtained BWC footage (BR 01 – BR 06) and cell phone footage (BR 07).

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Edwin Espinal interfered with § 87(2)(b) use of a recording device.

§ 87(2)(b) and § 87(2)(b) testified that their vehicle had a broken taillight when they were stopped. They did not allege that this vehicle stop was improper. Therefore, no vehicle stop allegation is pleaded.

Sgt. Espinal's BWC footage (BR 01), beginning at 0:30, showed that as he approached the vehicle, § 87(2)(b) sat in the back passenger-side seat holding his cell phone. Sgt. Espinal told § 87(2)(b) to stay off his phone. § 87(2)(b) refused, and said that he would record. Sgt. Espinal replied that § 87(2)(b) was free to record, but he needed to put his phone down. § 87(2)(b) repeated that he would record and turned his phone toward Sgt. Espinal. Sgt. Espinal repeated that he could record, but that he needed to put the phone down. Sgt. Espinal told § 87(2)(b) to clear his hands of any objects, or he would have § 87(2)(b) step out of the vehicle. Sgt. Espinal repeatedly said that he did not want to see anything in § 87(2)(b) hands.

PO Holder's BWC footage (BR 02), beginning at 0:50, showed that § 87(2)(b) placed his phone into a cup holder in the back seat of the vehicle pointed toward he and Sgt. Espinal.

§ 87(2)(b) provided a cell phone video (BR 07), that beginning at 0:00, showed him recording Sgt. Espinal and PO Holder. Sgt. Espinal asked him to put down his cell phone and clear his hands of objects. As § 87(2)(b) placed the phone in a cup holder, the video ended.

§ 87(2)(b) testified that he recorded Sgt. Espinal with his cell phone. Sgt. Espinal told § 87(2)(b) to put down his phone. § 87(2)(b) refused to put down his phone and added that he had the right to record. § 87(2)(b) tried to position his phone so that it recorded from a cup holder. Sgt. Espinal told him that the officers were recording. § 87(2)(b) did not know how his cell phone recording ended. He did not start another recording after his first recorded ended because he was told not to.

§ 87(2)(b) testified that when § 87(2)(b) recorded the officers, Sgt. Espinal told him to put his phone down. Sgt. Espinal said that his own camera was on, so § 87(2)(b) did not need to record.

Sgt. Espinal testified that when he first approached the vehicle, he observed a cell phone in § 87(2)(b) hand. Sgt. Espinal told § 87(2)(b) that he could record if he wanted, but he needed to clear his hands of any objects. Sgt. Espinal did not look at this cell phone closely. Sgt. Espinal assumed that if it was recording, it could continue recording without being in § 87(2)(b) hands. § 87(2)(b) placed his phone in the center console and faced it toward the officers. Sgt. Espinal did not remember if § 87(2)(b) complained about having to record this way. Sgt. Espinal instructed § 87(2)(b) to clear his hands of any objects because he had previously received bulletins about cell phones that could shoot a single bullet like a Deringer pistol or be used as a Taser. Sgt. Espinal did not remember when such bulletins were posted. Sgt. Espinal had this concern specifically about individuals who were involved in vehicle stops. He had previously told passengers of vehicles to stay off their phones because of this specific safety concern. Sgt. Espinal's concern that § 87(2)(b) phone may have been a weapon was a general concern, not specific to anything he observed during this incident.

Individuals have the right to lawfully record police activity, including detentions, searches, and arrests. Officers may not discourage an observer from recordings a police officer's activities or obstruct recording devices when there is no legitimate law enforcement reason to do so. The right to record police action can be limited for reasons such as the safety of officers. NYPD Patrol Guide Procedure 203-29 (BR 08).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

Allegation B – Abuse of Authority: Police Officer Brandon Grasser frisked § 87(2)(b)

Allegation C – Abuse of Authority: Police Officer Brandon Grasser searched § 87(2)(b)

Allegation D – Abuse of Authority: Sergeant Edwin Espinal frisked § 87(2)(b)

Allegation E – Abuse of Authority: Police Officer Brandon Grasser frisked § 87(2)(b)

Sgt. Espinal's BWC (BR 01), beginning at 1:50, showed PO Grasser ask if anyone had been smoking in the vehicle. § 87(2)(b) replied that he had been in the studio earlier. § 87(2)(b) added that PO Grasser could probably smell smoke on their clothes. At 2:10, PO Grasser asked § 87(2)(b) to exit the vehicle. § 87(2)(b) faced the body of the vehicle as PO Grasser touched his pants pockets and the area around his waistband. PO Grasser's left hand did not appear to enter § 87(2)(b) left pants pockets. PO Grasser's right hand and § 87(2)(b) right pockets were obstructed by the body of the vehicle. PO Grasser touched the area around § 87(2)(b) groin and then asked him to step to the back of the vehicle. At 9:10, Sgt. Espinal asked § 87(2)(b) to exit the vehicle. She exited, spread her arms, and turned around. Sgt. Espinal touched her side and spun her around 180 degrees. Sgt. Espinal told her to go to the back of the vehicle. At 9:25, Sgt. Espinal asked § 87(2)(b) to get out of the vehicle. PO Grasser patted down the sides of § 87(2)(b) legs and then touched around his genitals. When PO Grasser finished patting, Sgt. Espinal instructed § 87(2)(b) to walk to the back of the vehicle.

PO Grasser's BWC (BR 03), beginning at 0:05, showed him touch § 87(2)(b) left pants pocket and around § 87(2)(b) waistband. PO Grasser's right hand and § 87(2)(b) right pockets were not depicted.

§ 87(2)(b) and § 87(2)(b) both denied that their vehicle smelled like marijuana.

§ 87(2)(b) testified that PO Grasser patted § 87(2)(b) chest, down his torso, to his hips, and then reached into his pants pockets. She could not see how far PO Grasser reached into § 87(2)(b) pants pockets. PO Grasser patted down § 87(2)(b) legs and then between his groin area. Later, Sgt. Espinal told her to exit the vehicle and then to spread her arms. Sgt. Espinal patted her down by sliding his hands from under her breasts down her hips, then down her legs. PO Grasser patted down § 87(2)(b) from his shoulders to legs, then on his inner thighs, touching § 87(2)(b) groin area.

§ 87(2)(b) testified that PO Grasser patted around § 87(2)(b) waistband with an open palm. He did not allege that PO Grasser went into § 87(2)(b) pocket. Later, Sgt. Espinal touched § 87(2)(b)'s sides from her ribcage to her thigh. PO Grasser patted around his waistline and genitals.

Sgt. Espinal, PO Grasser, and PO Holder all testified that they smelled marijuana upon approaching this vehicle.

PO Grasser testified that he patted over § 87(2)(b) body to search for marijuana. He did not remember if he put his hands into § 87(2)(b) pockets. After an officer searched § 87(2)(b) PO Grasser searched § 87(2)(b)

Sgt. Espinal did not remember if he frisked § 87(2)(b)

Sgt. Espinal made a memo book entry noting that during this stop, he smelled the odor of marijuana (BR 09). PO Holder's memo book entry only included a link to his BWC footage (BR 10). PO Grasser did not make a memo book entry (BR 11).

In People v. Chestnut, 36 N.Y.2d 971 (1975), the court ruled that when officers stop a moving vehicle and detect the odor of marijuana emanating from that vehicle, they may conduct a warrantless search of that vehicle and its occupants (BR 12).

§ 87(2)(g)
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§ 87(2)(g)

Allegation F – Abuse of Authority: Sergeant Edwin Espinal searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Sgt. Espinal's BWC (BR 01), beginning at 9:50, showed him search throughout the vehicle, from the rear passenger side of the vehicle, to the front passenger seat, to the front driver seat, and finally the trunk.

As stated above, Sgt. Espinal's BWC footage showed that § 87(2)(b) and § 87(2)(b) both acknowledged that the officers may have smelled marijuana.

As stated above, Sgt. Espinal, PO Grasser, and PO Holder all testified that they smelled marijuana upon approaching this vehicle.

Sgt. Espinal did not remember who searched the vehicle.

Sgt. Espinal's memo book reflected that he searched the vehicle for marijuana with negative results (BR 09).

In People v. Chestnut, 36 N.Y.2d 971 (1975), the court ruled that when officers stop a moving vehicle and detect the odor of marijuana emanating from that vehicle, they may conduct a warrantless search of that vehicle and its occupants (BR 12).

§ 87(2)(g) [REDACTED]
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§ 87(2)(g) [REDACTED]

§ 87(4-b), § 87(2)(g) [REDACTED]
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§ 87(4-b), § 87(2)(g) [REDACTED]
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[REDACTED]
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Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (BR 18)
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (BR 19)
- Sgt. Espinal has been a member-of-service for 16 years and has been a subject of 46 allegations in 20 cases, none of which were substantiated.

- PO Grasser has been a member-of-service for six years and has been a subject of 12 allegations in five cases, none of which were substantiated.
- PO Holder has been a member-of-service for eight years and has been a subject of 38 allegations in 12 cases, five of which were substantiated.
 - Case #201502028 involved a substantiated discourtesy allegation. The Board recommended that he receive Formalized Training. The NYPD imposed Command Level Instructions.
 - Case #201804023 involved substantiated vehicle search and frisk allegations. The Board recommended that he receive Formalized Training, which the NYPD imposed.
 - Case #201904264 involved two substantiated Failure to Provide RTKA Card allegations. The Board recommended Command Level Instructions. The NYPD imposed instructions.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- According to the OCA, § 87(2)(b) has no history of convictions in New York City (BR 20).
- According to the OCA, § 87(2)(b) has no history of convictions in New York City (BR 21).
- According to the OCA, § 87(2)(b) has no history of convictions in New York City (BR 22).
- As of January 31, 2020, the NYC Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR 23).

Squad 6

Investigator: <u>e/Mac Muir</u>	<u>Supervising Investigator Muir</u>	<u>10/21/20</u>
Signature	Print Title & Name	Date

Squad Leader: <u>____ Jessica Peña</u>	<u>IM Jessica Peña</u>	<u>10/23/2020</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date